IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4791 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDULAL M BARAI

Versus

DWARKA NAGARPALIKA

Appearance:

MR PM THAKKAR for Petitioner

MR PV HATHI for Respondent No. 1

Ms. S.D.Talati, AGP for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 02/03/2000

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing the order dated 5.6.1995 of the Collector, Jamnagar as well as the order dated 7.6.1995 passed by Dwarka Nagarpalika whereby Dwarka Nagarpalika

has cancelled the registered sale deed executed by the Nagarpalika itself in favour of the petitioner selling the land admeasuring 150 sq.mtrs.

2. The petitioner made an application to Dwarka Nagarpalika on 24.3.1995 for grant of land admeasuring 139.54 sq.mtrs. for the purpose of residence. The Nagarpalika passed the resolution for the grant of the land to the petitioner for residential purpose subject to the fixation of the market rate by the competent authority. The Nagarpalika approved the resolution on 27th March, 1995 for grant of the land to the petitioner. The Nagarpalika sent the proposed on 30th March, 1995 to the Deputy Town Planner for fixation of the market rate of the land in dispute. The Deputy Town Planner, looking to the situation and other factors fixed the price at the rate of Rs.450/- per sq.mtr. on 18th April, 1995 and it was submitted to the Nagarpalika. The Nagarpalika issued a public notice on 3.4.95 whereby all concerned persons or any person having interest for purchasing the land were given right to make an application to purchase the land within 15 days by offering higher price as mentioned in the notice. It was also made clear tht after the period mentioned in the public notice, no person will have any right to raise any objection or make any appliation for purchasing the land in question and the land would be sold to the person concerned after following necessary procedure. On 26th April, 1995 the Nagarpalika sent the papers to the Collector requiring sanction to the proposal of the grant of the land to the petitioner. The Collector by an order dated 27th April, 1995 considering the opinion of the Administrator, granted permission for the allotment of the land admeasuring 139.54 sq.mtrs. subject to the condition to recover value of Rs.62,793/- under section 65(1) of the Gujarat Municipalities Act (hereinafter referred to as the "Act") and Rules framed thereunder by the State Government. It was considered by the Collector at the time when sanction was granted that the market value of the said land was fixed by the Deputy Town Planner at Rs.62,793/- at the rate of Rs.450/- per sq.mtr. and the Nagarpalika has passed the resolution on 27th March, 1995 having no objection against the sale of the said land for residential purpose to the petitioner . The petitioner deposited the required amount of sale consideration on 12.5.95 and the sale deed was executed by the Nagarpalika in favour of the petitioner on the same day and that sale deed was also registered. The petitioner was given possession of the land on the same day and the Nagarpalika issued possession receipt in favour of the petitioner. The petitioner received a

letter dat ed 29th May, 1995 from the Nagarpalika requiring him not to make any construction upon the land in question except with the permission of the Nagarpalika. The Collector, by an order dated 5.6.95 cancelled the permission granted on 9.5.95 and the Nagarpalika was also direct ed to cancel with immediate effect, the procedure adopted by it, only on the ground that the land in question should be disposed of independently and hence, if the land in question is sold by public auction, then financial interest of the Nagarpalika would be protected.

In view of this letter, the Nagarpalika unilaterally cancelled the registered sale deed on 6.6.95 and took paper possession of the land in question by drawing some Panchnama.

3. Heard the learned counsel for the parties. The respondents Nagarpalika and Collector have filed their respective affidavits-in-reply to the petition.

4. The contention of the learned counsel for the petitioner is that the Collector cannot sit over in appeal on his own order or judgment. No show cause notice has been issued as to why the sale deed executed in favour of the petitioner should not be cancelled or the permission granted earlier should not be cancelled. No opportunity of hearing was afforded to the petitioner before passing the impugned order by the Collector. As such, the order of the Collector cancelling permission granted earlier by the Collector is in clear violation of principles of natural justice and is not sustainable in the eye of law. The learned counsel for the petitioner further contended that under section 65(2) of the Act, the Municipality is not required to obtain any permission if value of the property does not exceed Rs. 1 lac. In the present case, the market value of the property has been fixed by the Deputy Town Planner below Rs. 1 lac, i.e. Rs.62,793/-. Therefore, permission of the State Government is not required under any provisions of law for entering into sale transaction in favour of the petitioner. The petitioner is not authorised under the provisions of the Act either to give permission or to cancel the permission at all. The order passed by the Collector is therefore, illegal and is not sustainable in the eye of law. The transaction has resulted into sale of the property in favour of the petitioner. The sale deed was executed and possession was given to the petitioner and therefore, there was no option to the Nagarpalika except to file a suit before appropriate

court of law challenging the exectuion of the sale deed or for cancelling the sale deed executed in favour of the petitioner on the ground that the sale deed has been executed by means of fraud, misrepresentation or coercion etc. If there is no such allegation or any suit proceedings, the sale deed executed in favour of the petitioner cannot be cancelled at all by the Nagarpalika or by the Collector. According to him, the action of the Collector as well as that of the Nagarpalika is nothing, but arbitrary and against statutory provisions of law and in violation of principles of natural justice.

5. On the other hand, the learned counsel for the respondent Nagarpalika contended that the action of the Collector and Municipality are fully justified and legal one in view of the fact that certain complaints were received by the Collector that the sale of the property may cause some obstruction in the visiting of the adjoining religious places. The Town Planning Officer has not given the correct valuation report of the adjoining places, value of the land was fixed ranging from Rs.650/- to Rs.1250/- per sq.mt. As such, the report regarding valuation of the property was not justified and the Municipality will have to suffer loss in respect of the sale transaction of the present case. It is also contended by the learned counsel for the respondent Nagarpalika that the Municipality was not justified in allowing private negotiations and it should have been done by a public auction. It is further contended that the Collector was fully justified under the provisions of section 258 of the Act read with section 21 of the General Clauses Act. Section 258 of the Act provides that if in the opinion of the Collector, the execution of any order or resolution of a municipality, or the doing of anything which is about to be done or is being done by or on behalf of a municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof and where the execution of any work in pursuance of the order or resolution of the municipality is already commenced or completed direct the municipality to restore the position in which it was before the commencement of the work. It is also stated that under section 21 of the General Clauses Act, if any authority has power to issue an order that order will include the order of cancellation.

6. The learned counsel for the petitioner in reply to the contention regarding exercise of power of

the Collector under section 258 of the Act read with section 21 of the General Clauses Act, submitted that the question is not that the order passed by the Municipality has been cancelled by the Collector, but in the instant case, the Collector has cancelled his own order for which he has no power at all and he cannot have jurisdiction of review of his own order under section 258 of the Act. He has cancelled his own permission earlier granted to the Municipality for makaing sale in favour of the petitioner.

7. Now, we have to consider and see as to whether any illegality has been committed in the sale transaction in favour of the petitioner or not. In the present case, admittedly, the petitioner applied for allotment of the land for residential purpose. The Nagarpalika by its resolution approved the grant of that land in favour of the petitioner and the subject to the fixation of the market rate by the competent authority. The Competent Authority i.e. Deputy Town Planner valued the property at the rate of Rs.450/- per sq.mtr.and the Nagarpalika also issued a public notice inviting objections or any application for grant of the land in favour of the petitioner or anybody else. No person has raised any objection or made an application for higher price than the rate mentioned in response to the public notice. Under the provisions of the Act, though the Nagarpalika is not required to obtain permission of the Collector, still however, obtained Collector's permission to the proposal of the grant of the land in favour of the petitioner by its letter dated 26.4.95. The Collector, after considering the material on record, came to the conclusion that the sanction can be granted as Nagarpalika has passed the resolution on 27.3.95 having no objection against sale transaction for the residential purpose in favour of the petitioner. The learned counsel for the respondents has not contended at all that the Nagarpalika has no authority at all to sell the property to a private person i.e. the petitioner. The transaction under the provisions of section 65 of the Act can be made by the Municipality in favour of any private person. It is not mentioned in secton 65 of the Act that no sale transaction could be made except by way of public auction. In other words, the Municipality is fully competent to make any sale transaction with any private person without holding any public auction. Thus, the sale transaction made by the Nagarpalika in favour of the petitioner is perfectly justified and cannot be said to have been vitiated on any ground except it is held illegal, null and void by any court of law. In the present case, the Nagarpalika, after having executed the

sale deed in favour of the petitioner, possession was handed over to the petitioner and the sale was registered. It does not matter whether on the basis of the registered sale deed, the petitioner's name was mutated or not in the revenue record. But once the registered sale deed was executed that should not be and cannot be cancelled by any authority except by the court of law in legal proceedings. Admittedly, the Nagarpalika has not filed any suit for cancelling the sale deed executed in favour of the petitioner.

8. So far as the powers of the Collector under section 258 of the Act read with section 21 of the General Clauses Act are concerned, the case of the respondent Nagarpalika that the Collector, after having come to know tht the sale transation is illegal, he exercised powers under section 258 of the Act read with section 21 of the General Clauses Act. In the instant case, the Collector has cancelled his own order. Firstly, he accorded sanction to grant land in favour of the petitioner by his letter dated 27th April, 1994 and that sanction accorded was cancelled by the letter dated 5th June, 1995. It is not the case of the respondent Nagarpalika that the sale transaction in favour of the petitioner was made on the basis of the misrepresentation or practising fraud by the petitioner. But it is only stated in the letter dated 5th June, 1995 that the land is required to be disposed of independently meaning thereby, by a public auction. If the authority is entitled to sell the property by a public auction, tender or by any other means and the property has been sold, then the authority is not competent to say that other procedure for sale transaction should have been adopted. In the present case, the procedure adopted by the Nagarpalika was not illegal as public notice had already been issued and no objection was received by the Nagarpalika nor any application was also received offering higher price of the property in question mentioned in the public notice. As such, the Collector has not exercised his power under section 258 of the Act read with section 21 of the General Clauses Act. Moreover, he is not competent to review his own order without affording an opportunity of hearing to the petitioner. The Municipality as well as the Collector both are required under the law to issue firstly a show cause notice as to why the sale deed executed in favour of the petitioner should not be cancelled and after giving a reasonable opportunity of calling for explanation or giving a personal hearing, the order ought to have been passed. In the present case, the Collector has not issued any notice nor has given any opportunity

of hearing to the petitioner before cancelling the sanction. The Municipality has not issued any notice for cancelling the sale deed executed by itself. If the sale deed has already been executed, the sale deed cannot be cancelled by the Nagarpalika on any ground except by filing a suit before appropriate court of law. The cancellation can be made by the court of law and not by the Nagarpalika. Therefore, the action of the respondent Nagarpalika as well as that of the Collector, Jamnagar cancelling the sale deed executed in favour of the petitioner, is illegal, unjust, arbitrary and bad in law and requires to be quashed and set aside.

9. In view of the foregoing discussion, this petition deserves to be allowed and is accordingly allowed. The order dated 5.6.1995 of the Collector, Jamnagar and the order dated 7.6.1995 passed by the respondent Dwarka Nagarpalika cancelling the registered sale deed executed in favour of the petitioner are hereby quashed and set aside. Rule is made absolute with no order as to costs.

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